

Appendix: Dissenting opinion by Senator Terry Mercer

Second Report of the Committee of Selection

Introduction

Rule 12-2(3) in the Rules of the Senate provides that once appointed to a standing committee, a senator remains a member of that committee for the duration of the session. The Rule reads:

Term of appointment of members of committees

12-2. (3) Except as otherwise provided, once the report is adopted by the Senate, Senators appointed to the standing committees and the standing joint committees shall serve for the duration of the session.¹

Whether a senator changes their group affiliation, or a non-affiliated senator joins a group, the Rule ensures the independence of each senator to conduct their committee work, entrusted to them by the Senate itself. But recent sessional motions have infringed on the independence of individual senators by setting aside that rule and placing the authority over committee seats directly with the leadership of parliamentary groups and political parties. This Report is a continuation of that misguided practice.

Historical information

The principle that committee seats belong to individual senators is one that dates to the very first committees ever established in the Senate. In the 1st Parliament, 1st Session, on November 13, 1867, each committee was established by a separate motion, most of which included the phrase: “be appointed a Committee [...] for the present Session”.²

This practice remained until February 19, 1902, when the wording of the motions was changed to the phrase “to serve on the several Standing Committees during the present Session”.³ The relevant motion for the Committee of Selection was:

That, pursuant to Rule 79, the following Senators be appointed a Committee of Selection to nominate the Senators to serve on the several Standing Committees during the present Session, [...] to report with all convenient speed the names of the Senators so nominated.

This phrase was used 64 times between 1902 and 1968.⁴

On November 28, 1968, the Fourth Report of the Special Standing Committee on the Rules of the Senate proposed an amendment to the Rules that provided for the Committee of Selection to appoint senators “for the duration of that Parliament.”⁵ The Committee, in its explanatory notes, recommended “that Standing Committees be appointed for the duration of a Parliament rather than the duration of a

¹ https://sencanada.ca/en/about/procedural-references/rules/12/#C12R2_3

² *Senate Journals*, 1st Parliament, 1st Session: Vol. 1, [page 75](#) and [page 76](#)

³ [Senate Minutes of Proceedings, 9th Parliament, 2nd Session, 19 February 1902, page 33](#)

⁴ [Canadian Parliamentary Historical Resources search results](#)

⁵ https://parl.canadiana.ca/view/oop.com_SOC_2801_8_1/55?r=0&s=1

Session only.” This change was reflected in the printed versions of the Rules of the Senate in 1969 but reverted to “for the duration of that Session” in 1973.

The Rule has remained relatively unchanged since 1973, preserving the principle that individual senators are appointed to their committee seats and that those seats belong to each senator.

Jurisdictional comparison

It must be noted that other Westminster parliaments have similar rules and practices. The United Kingdom’s House of Lords complies with its Standing Order 63, established in 1975, which states:

The orders of appointment of the following committees, and any of their sub-committees, shall remain in force and effect, notwithstanding the prorogation of Parliament, until such time as the House or committee makes further orders of appointment in the next succeeding session:
[...]⁶

In the Australian Senate, members of standing committees are appointed at the beginning of each Parliament. Membership may only be changed by a motion, which discharges the former member and appoints a new one.⁷

In Canada’s House of Commons, Standing Order 114(1) also ensures that members appointed to a standing committee remain members throughout the Parliament:

114.

Membership of standing and standing joint committees.

- (1) The membership of standing and standing joint committees shall be set out in the report of the Standing Committee on Procedure and House Affairs, which shall prepare lists of members in accordance with Standing Order 104. Once the report of the committee is concurred in, the membership shall continue from session to session within a Parliament, subject to such changes as may be effected from time to time.

Conclusion

I do not concur with this report or the recommendation(s) of the Committee of Selection in this matter. It is my view that the allocation of committee seats to parliamentary groups and political parties is a step backward in Senate modernization and removing committee portability entrenches the authority of group and party leadership. Indeed, if the goal is a Senate made up of more independent senators, it is contrary to that goal to remove the right of individual senators to be appointed to committees for the duration of the session, regardless of affiliation. By removing that right and placing committee seats solely in the hands of facilitators, leaders, whips and liaisons, we would be undermining individual independence and limiting the freedom of affiliation of us all.

⁶ [Standing Orders of the House of Lords Relating to Public Business](#)

⁷ *Odgers’ Australian Senate Practice*, [Chapter 16, “Committees”](#)